

DRAFT 11/28/11

ORDINANCE NO. _____ (NEW SERIES)

AN ORDINANCE AMENDING SECTION 650 OF THE SAN DIEGO COUNTY
ADMINISTRATIVE CODE RELATING TO HEARING OFFICERS AND
AMENDING AND ADDING SECTIONS TO THE SAN DIEGO COUNTY CODE
RELATING TO PROCEDURES TO RECORD ORDERS AS LIENS; RECORDATION
OF NOTICES OF VIOLATION; SOUND LEVEL LIMITS; ABANDONED VEHICLE
ABATEMENT; GRADING OR CLEARING WITHIN OPEN SPACE EASEMENTS
AND ADOPTION OF CHAPTER 1, DIVISION II, OF THE CALIFORNIA BUILDING
CODE

The Board of Supervisors of the County of San Diego ordains as follows:

Section 1. The Board of Supervisors finds and determines that the San Diego County Code should be updated by adding Chapter 3 to Division 8 of Title 1 to provide provisions for Recordation of Notices of Violation against a property with a violation, by amending Section 91.1.114.6 regarding Approval Required After Violation, amending Section 18.214 regarding time limits for Procedures to Record Orders as Liens, and making other miscellaneous changes. The Board finds that these amendments, and those in the Administrative Code related to hearing officers, are reasonable and necessary for the public health, safety, convenience, and welfare.

Section 2. Section 650 of the Administrative Code is amended to read as follows:

SEC. 650. ESTABLISHMENT OF POSITION.

This article establishes the position of County Hearing Officer, pursuant to Government Code sections 27720 et seq. This article does not apply to Hearing Officers hired to hear appeals of administrative citations, pursuant to San Diego County Code section 18.101 et seq. or appeals of recording of notices of violation, pursuant to San Diego County Code sections 18.301 et seq.

Section 3 Section 18.207 of the San Diego County Code is amended to read as follows:

SEC.18.207. PAYMENT OF CIVIL PENALTIES.

(a) Civil penalties assessed shall be paid in full within ~~45~~ 14 days from the date the Notice and Order is served unless the person served with the Notice and Order files a timely request for a hearing under section 18.208.

(b) In the case of a continuing violation, the person charged shall pay any amount assessed in the Notice and Order within ~~45~~ 14 days from the date the Notice and Order was served. If a Director assesses continuing penalties as provided in section 18.204(b)(5) the person charged with a continuing violation shall be responsible to pay accrued penalties within ~~45~~ 14 days from the date of notice from a Director that payment of an additional amount is due.

(c) Civil penalties paid to the County before a hearing under section 18.208 shall be refunded in full or in part if a hearing officer determines:

(1) A violation enforceable under this chapter did not occur or did not occur on some or all of dates charged, or

(2) The person charged was not responsible for a violation, or

(3) The amount of the civil penalties shall be reduced.

Section 4. Section 18.214 of the San Diego County Code is amended to read as follows:

SEC. 18.214. PROCEDURES TO RECORD ORDERS AS LIENS.

If the responsible person fails to pay civil penalties in an AEO the County may record the order as a lien against the real property upon which a violation is located in accordance with the following procedures:

(a) Before recording, the Director shall serve the responsible person with a Notice of Intent to Record an AEO which informs the responsible person that recording the order will result in a lien against real property unless the responsible person pays the amount due within ~~45~~ 30 days from the date of the notice. The Director shall serve the Notice of Intent to Record ~~an AEO~~ as provided by Section 18.206. The Notice of Intent to Record may be served at the same time as the AEO.

(b) If the responsible person fails to pay the amount due in full by the due date the County may record the AEO as a lien. The lien shall attach upon recording the order in the Office of the County Recorder. The lien shall continue until the amount of the lien is paid in full and the violations listed in the AEO are corrected.

(c) Notice of recording the AEO as a lien may be provided to the responsible person as provided by Government Code section 27297.5.

Section 5. Chapter 3 is added to Division 8 of Title 1 of the San Diego County Code to read as follows:

Title 1: General Provisions

Division 8: Administrative Remedies
Chapter 3: Recordation of Notices of Violation

SEC.18.301 **AUTHORIZATION AND PURPOSE**

This chapter provides a procedure by which County enforcement officials may record a Notice of Violation as an alternative enforcement method for any violation of this code, the San Diego County Zoning Ordinance and any other County ordinance or State law that County officials enforce. The remedies in this chapter are in addition to all other remedies the County may pursue and only govern enforcement actions brought pursuant to this chapter.

SEC. 18.302 **DEFINITIONS**

The following definitions shall apply to this chapter:

(a) "Director" means the Director of any County department or a Director's designated representative, responsible to enforce County codes, County ordinances or State codes.

(b) "Hearing Officer" means a person who presides over an administrative hearing for the recordation of a Notice of Violation.

(c) "Responsible person" means a "person," as defined in Section 12.115 of this code, responsible for a violation prosecuted under this chapter.

SEC. 18.303 **PROCEDURES FOR RECORDATION**

(a) Once a Director has issued a Notice of Violation to a responsible person and the property remains in violation after the deadline established in the Notice of Violation expires, the Director may record a Notice of Violation with the Recorder's Office of San Diego County.

(b) Before recordation, the Director shall provide to the responsible person and all owners of record a Notice of Intent to Record stating that:

(1) A notice of violation will be recorded against your property if the violation(s) existing on your property is(are) not corrected by the deadline established in the Notice of Intent to Record.

(2) You may file an appeal within 14 days of the date of the Notice of Intent to Record was issued.

(3) The County may hold you responsible for all administrative costs, including reasonable attorney's fees.

(4) The County may withhold permits for any alteration, repair, or construction pertaining to any existing or new structures on your property, or any permits pertaining to the use and development of the real property if 1) an appeal has not been timely filed; or 2) if a Hearing Officer affirms the Director's decision to record a Notice of Violation.

(c) After recordation of a Notice of Violation, the County may withhold permits until a Notice of Compliance has been issued by the Director. The County may not withhold permits which are necessary to obtain a Notice of Compliance or which are necessary to correct serious health and safety violations.

(d) The letter shall be served pursuant to any of the methods of service set forth in section 11.112 of this code. If for any reason service cannot be completed as provided in section 11.112, service may be accomplished by posting a copy of the notice in a conspicuous place on or near the property on which the violation is located. At the discretion of the Director, the notice may be posted in addition to personal or mail service.

(e) If the Director does not receive a written request to appeal pursuant to the procedures set forth in this Division and the violation still remains on the property, the Director may record the Notice of Violation.

(f) The recorded Notice of Violation shall include the name of the property owner(s), assessor's parcel number, the parcel's legal description, and a copy of the latest Notice of Violation.

SEC. 18.304 PROCEDURES FOR RECORDING A NOTICE OF VIOLATION

(a) Any person receiving a Notice of Intent to Record a Notice of Violation may only appeal the following issues:

(1) Whether the conditions listed in the Notice of Violation violate the County Code or applicable State codes.

(2) Whether the Director afforded the responsible person with due process by adhering to the notification procedures specified in this Division.

(b) Failure of any person to file an appeal in accordance with these provisions shall constitute a waiver of the appeal and shall not affect the validity of the recorded Notice of Violation.

(c) A person may request a Request for Hearing form to contest a Notice of Intent to Record a Notice of Violation within 14 days after the Notice was served, either at the office of the department that issued the Notice or by returning a Request for Hearing form by mail.

(d) If a person requests a Request for Hearing form by mail, the request must be postmarked within 14 days of the Notice of Intent to Record a Notice of Violation.

(e) A hearing before the Hearing Officer shall be set for the earliest practicable date after a request for hearing has been properly filed in accordance with the provisions of this Division.

(f) The person requesting the hearing shall be notified of the time and place set for the hearing at least ten days prior to the date of the hearing.

SEC. 18.305 HEARING OFFICER

The Director shall appoint an independent Hearing Officer to preside over an Intent to Record a Notice of Violation hearing which has been properly requested under the provisions of this Chapter.

SEC. 18.306 HEARING PROCEDURES

The following procedures shall apply to hearings conducted under this chapter:

(a) Every witness shall take an oath or make an affirmation.

(b) The County bears the burden of proof at all Notice of Intent to Record Notice of Violation hearings. The standard of proof at a hearing is the preponderance of the evidence.

(c) The hearing officer may consolidate hearings involving the same responsible person and/or the same property.

(d) The Hearing Officer may continue a hearing for good cause.

(e) Each party shall have the right to call and examine witnesses, introduce exhibits, cross-examine opposing witnesses, impeach any witness regardless of which party first called the witness to testify and rebut the evidence against the party. The County may call and examine the appellant or any agent of the appellant as a witness during the department's case in chief or during the department's rebuttal case. The hearing officer may examine the appellant or any of the appellant's employees or agents as if under cross-examination.

(f) Strict rules of evidence shall not apply. Evidence that might otherwise be excluded under the Evidence Code may be admissible if the hearing officer determines that it is relevant and the kind that reasonably prudent persons rely on in making decisions. All rules or privileges recognized by the Evidence Code, however, shall apply to the hearing. The hearing officer shall also exclude irrelevant and cumulative evidence.

(g) The hearing shall be conducted in English. If the appellant or any of appellant's witnesses require an interpreter, the appellant is responsible to provide a State certified interpreter at appellant's expense.

SEC. 18.307 RIGHT TO JUDICIAL REVIEW

Any person against whom a Notice of Violation has been recorded may obtain review of the order by filing a petition for writ of mandate with the San Diego County Superior Court in accordance with the timelines and procedures set forth in California Code of Civil Procedure Section 1094.5.

SEC. 18.308 NOTICE OF COMPLIANCE PROCEDURES

(a) When the violations listed on the Notice of Violation have been corrected, the responsible person may file with the Director a written request for a Notice of Compliance on a form provided by the County.

(b) Once the Director receives this request, the Director shall re-inspect the property within thirty (30) calendar days to determine whether the violations listed in the Notice of Violation have been corrected and whether all necessary permits have been issued and final inspections have been performed.

(c) The Director shall serve a Notice of Compliance to the responsible person if the Director determines that:

(1) All violations listed in the recorded Notice of Violation have been corrected.

(2) All necessary permits have been issued and finalized.

(3) All fines and penalties assessed against the property have been paid.

(4) The party requesting the Notice of Compliance has paid any requisite administrative costs to the County.

(d) The Notice of Compliance shall be served in the manner provided in Section 11.112 of this code. If for any reason service cannot be completed as provided in section 11.112, service may be accomplished by posting a copy of the notice in a conspicuous place on or near the property on which the violation is located. At the discretion of the Director, the notice may be posted in addition to personal or mail service.

(e) If the Director denies a request to issue a Notice of Compliance, the Director shall serve the responsible person with a written explanation setting forth the reasons for the denial. The written explanation shall be served in the manner provided in Section 11.112 of this code. If for any reason service cannot be completed as provided in section 11.112, service may be accomplished by posting a copy of the letter in a conspicuous

place on or near the property on which the violation is located. At the discretion of the Director, the letter may be posted in addition to personal or mail service.

(f) The Directors decision denying a request to issue a Notice of Compliance constitutes the final decision in the matter and is not appealable.

SEC. 18.309 CANCELLATION OF A RECORDED NOTICE OF VIOLATION

The Notice of Compliance may be recorded with the County Recorder's Office. The recordation of the Notice of Compliance shall have the effect of canceling the recorded Notice of Violation.

Section 6. Section 36.404 of the San Diego County Code is amended to read as follows:

SEC. 36.404. GENERAL SOUND LEVEL LIMITS.

(a) Except as provided in section 36.409 of this chapter, it shall be unlawful for any person to cause or allow the creation of any noise, which exceeds the one-hour average sound level limits in Table 36.404, when the one-hour average sound level is measured at the property line of the property on which the noise is produced or at any location on a property that is receiving the noise.

**TABLE 36.404
SOUND LEVEL LIMITS IN DECIBELS (dBA)**

ZONE	TIME	ONE-HOUR AVERAGE SOUND LEVEL LIMITS (dBA)
(1) RS, RD, RR, RMH, A70, A72, S80, S81, S87 , S90, S92, RV, and RU with a <u>Land Use Designation</u> density of less than 11 <u>10.9</u> dwelling units per acre.	7 a.m. to 10 p.m.	50
	10 p.m. to 7 a.m.	45
(2) RRO, RC, RM, S86, V5, RV and RU with a <u>Land Use Designation</u> density of 11 <u>10.9</u> or more dwelling units per acre.	7 a.m. to 10 p.m.	55
	10 p.m. to 7 a.m.	50
(3) S94, V4, and all commercial zones.	7 a.m. to 10 p.m.	60
	10 p.m. to 7 a.m.	55
(4) V1, V2	7 a.m. to 7 p.m.	60

V1, V2	7 p.m. to 10 p.m.	55
V1	10 p.m. to 7 a.m.	55
V2	10 p.m. to 7 a.m.	50
V3	7 a.m. to 10 p.m.	70
	10 p.m. to 7 a.m.	65
(5) M50, M52, and M54	Anytime	70
(6) S82, M56, and M58.	Anytime	75
(7) S88 (see subsection (c) below)		

(b) Where a noise study has been conducted and the noise mitigation measures recommended by that study have been made conditions of approval of a Major Use Permit, which authorizes the noise-generating use or activity and the decision making body approving the Major Use Permit determined that those mitigation measures reduce potential noise impacts to a level below significance, implementation and compliance with those noise mitigation measures shall constitute compliance with subsection (a) above.

(c) S88 zones are Specific Planning Areas which allow different uses. The sound level limits in Table 36.404 above that apply in an S88 zone depend on the use being made of the property. The limits in Table 36.404, subsection (1) apply to property with a residential, agricultural or civic use. The limits in subsection (3) apply to property with a commercial use. The limits in subsection (5) apply to property with an industrial use that would only be allowed in an M50, M52 or M54 zone. The limits in subsection (6) apply to all property with an extractive use or a use that would only be allowed in an M56 or M58 zone.

(d) If the measured ambient noise level exceeds the applicable limit in Table 36.404, the allowable one-hour average sound level shall be the one-hour average ambient noise level, plus three decibels. The ambient noise level shall be measured when the alleged noise violation source is not operating.

(e) The sound level limit at a location on a boundary between two zones is the arithmetic mean of the respective limits for the two zones. The one-hour average sound level limit applicable to extractive industries, however, including but not limited to borrow pits and mines, shall be 75 decibels at the property line regardless of the zone in which the extractive industry is located.

(f) A fixed-location public utility distribution or transmission facility located on or adjacent to a property line shall be subject to the sound level limits of this section measured at or beyond six feet from the boundary of the easement upon which the facility is located.

Section 7. Section 78.102 of the San Diego County Code is amended to read as follows:

SEC. 78.102. DEFINITIONS.

(a) "Vehicle" means a device by which any person or property may be propelled, moved, or drawn upon a highway, except a device moved by human power or used exclusively upon stationary rails or tracks. Vehicle includes the component parts of such device. Vehicle includes registered and unregistered vehicles.

(b) "Abandoned Vehicle" includes:

(1) Any vehicle or part that is parked, stored or left on public or private property in such inoperable or neglected condition that the owner's intention to relinquish all rights or interests in it may be reasonably concluded.

(2) Any vehicle or part that is wrecked, dismantled or inoperative, and that is parked, stored, or left on public or private property, except as provided in Section 78.104 of this division.

(3) Any vehicle left, parked, resting or otherwise immobilized on any highway or public right of way which lacks an engine, transmission, wheels, tires, doors, windshield, or any other part or equipment necessary to operate safely on the highway.

(c) "Public Nuisance Vehicle" means any abandoned vehicle, or any vehicle or part that is wrecked, dismantled or inoperative, that is left on public or private property, and that creates a condition tending to reduce the value of private property, promotes blight and deterioration, invites plundering, creates fire hazards, constitutes an attractive nuisance endangering the health and safety of minors, harbors rodents and insects, or jeopardizes health, safety and general welfare.

(d) "Wrecked Vehicle" means any vehicle that is damaged to such an extent that it cannot be operated safely upon the highway.

(e) "Dismantled Vehicle" means any vehicle that is partially or wholly disassembled.

(f) "Inoperative Vehicle" means any motor vehicle that cannot be moved under its own power.

(g) "Highway" means a way or place of whatever nature open to the use by the public for purposes of vehicular travel. Highway includes street. Highway includes County maintained as well as non-County maintained public highways.

(h) "Designated Employee" means those employees of the Department of ~~Environmental Health~~ Planning and Land Use whose duties include enforcement of this

division. Designated employee includes the Director of the Department of ~~Environmental Health~~Planning and Land Use.

(i) "Hearing Officer" means the County Abatement Board as defined in the Uniform Public Nuisance Abatement Procedure, Chapter 2, Division 6, Title 1 (commencing with Section 16.201) of this Code.

(j) "Officer" means a peace officer as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, or any employee of the Sheriff's Department or California Highway Patrol designated to enforce the provisions of this division.

(k) "Cost of Abatement" means all costs incurred in the abatement and removal of a vehicle or part including, but not limited to, hearing costs, staff costs, legal costs, overhead, administration, appeal costs, assessment confirmation hearing costs, towing and removal costs, and costs of storage and sale.

(l) "Uniform Public Nuisance Abatement Procedure" means Chapter 2, Division 6, Title 1 (commencing with Sec. 16.201) of the San Diego County Code of Regulatory Ordinances.

(m) "Public Property" includes highways.

Section 8. Section 78.109 of the San Diego County Code is amended to read as follows:

SEC. 78.109. ENFORCEMENT, ADMINISTRATION BY DIRECTOR OF THE DEPARTMENT OF ENVIRONMENTAL HEALTH PLANNING AND LAND USE.

The Director of ~~the Department of Environmental Health~~Planning and Land Use, designated employees, and any officer are responsible for enforcing the provisions of this division. Designated employees, pursuant to Penal Code Section 830.12, and any officer shall have the power to issue citations for any violations of the provisions of this division and of Vehicle Code Section 22523. No individual shall exercise the power to issue citations without first meeting the minimum training requirements of Penal Code Section 832(a). The Director of ~~the Department of Environmental Health~~Planning and Land Use shall administer the provisions of the division.

Section 9. Section 78.201 of the San Diego County Code is amended to read as follows:

SEC. 78.201. AUTHORITY TO REMOVE ABANDONED VEHICLES ON PUBLIC OR PRIVATE PROPERTY.

Pursuant to authority under ~~Government~~Vehicle Code Section 22660, if a designated employee or officer has reasonable grounds to believe that a vehicle or part has been abandoned, or that a wrecked, dismantled, or inoperative vehicle or part has been parked, stored or left on public or private property in violation of the provisions of this division, the designated employee or officer may abate and remove the vehicle or part as a public nuisance in accordance with the procedures prescribed in this chapter.

Section 10. Section 81.701 of the San Diego County Code is amended to read as follows:

SEC. 81.701. DESIGN OF MINOR SUBDIVISION.

Except as otherwise provided in this chapter a minor subdivision shall conform to the lot design requirements in section 81.401. Section 81.401(q) shall only apply to a minor subdivision in a "Rural ~~Development Area~~Regional Category," as that term is used in the County General Plan.

Section 11. Section 81.805 of the San Diego County Code is amended to read as follows:

SEC. 81.805. CENTER LINES, RIGHT-OF-WAY LINES, PROPOSED ROAD WIDENING LINES AND BUILDING LINES.

If a street designated as a major highway road or a prime arterial highway on the County General Plan ~~Circulation~~Mobility Element is shown on a parcel map and a: (a) centerline, as defined in section 51.302(b), (b) right-of-way line, (c) proposed road widening line or (d) street setback line, as defined in section 51.302(p), has been established with respect to that street pursuant to section 51.301 et seq., section 75.101 et seq. or this division, each of those lines shall be shown at the appropriate location on the parcel map and clearly labeled to identify its function.

Section 12. Section 87.112 of the San Diego County Code is amended to read as follows:

SEC. 87.112. GRADING OR CLEARING WITHIN OPEN SPACE EASEMENTS.

It shall be ~~a violation of this Division~~unlawful for any person to maintain or allow, perform or cause to be performed any structure, grading or clearing on a property contrary to the express terms of an open space easement, conservation easement or other development restrictive easement which has been granted to the County of San Diego, ~~if that person has actual or constructive notice of the terms of such easement,~~ except where such clearing or grading is performed pursuant to and is limited to the extent authorized

by the valid order or regulation of an authorized government official, for fire control or other public safety purposes.

Section 13. Section 91.1.114.6 of the San Diego County Code is amended to read as follows:

SEC. 91.1.114.6. APPROVAL REQUIRED AFTER VIOLATION.

(a) It shall be unlawful for a person to occupy, use or maintain a building or structure until all inspections and approvals required by this chapter have been completed. When a person who commences work without a permit in violation of this chapter is issued a permit to correct the violation, the violation is not considered corrected until the building official has inspected and approved the work commenced and issued a certificate of occupancy. ~~If a building or structure was completed before the permit was issued it shall be unlawful to occupy or use the building or structure until all inspections and approvals required by this chapter have been completed.~~

(b) It shall be unlawful for a person to fail to obtain a building permit within 180 days of the date their application for a building permit is submitted, or within an alternate timeframe issued at the discretion of the Building Official, if that person had previously commenced work without a permit in violation of this chapter. ~~When the building official reviews a building permit application or issues a permit to a person who commenced work without a permit in violation of this chapter, the building official may impose a deadline within which the applicant is required to correct deficiencies in the application or obtain a final inspection. The deadline shall be no more than one year from the date the permit was issued. The building official may grant a one time permit extension under this section for up to one year for good cause.~~

(c) ~~If each deficiency in the application is not corrected within the deadline, or the permit does not receive inspections within the deadline, the project associated with the plan review or the building permit shall be considered to be in violation of this chapter. The County may abate the violation including removing or razing any building or structure, issue citations, assess civil penalties, and take other enforcement action for reasons of inadequate progress until such time that the violation has been corrected. It shall be unlawful for a person to fail to obtain a certificate of occupancy within 180 days of the date of issuance of a building permit, or within an alternate timeframe issued at the discretion of the Building Official, if that person had previously commenced work without a permit in violation of this chapter.~~

(d) It shall be unlawful for a person to fail to obtain an inspection once every ninety days after the issuance of a building permit until the Certificate of Occupancy is issued, if that person had previously commenced work without a permit in violation of this chapter.

Section 14: This ordinance shall take effect and be in force thirty days after its passage and before the expiration of fifteen days after its passage, a summary hereof shall be published once with the names of the members of this Board voting for and against it in the _____ a newspaper of general circulation published in the County of San Diego.